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Legislative History – Montana Session Law

Chapter: 813 Session L: 1991

Bill Number: SB 473

Checklist of Bill History

History and Final Status Sheet	☑
Introduced Bill	☑
Fiscal Note	☐
Third Reading Bill	☐
Final Version of Bill	☐

House	**Senate**
Committee: Judiciary	Committee: Labor & Employment Relations
Hearing Date(s): 4/22/1991	Hearing Date(s): 4/16/1991
Committee Report: 4/22/1991	Committee Report: 4/16/1991

Conference Committee

Hearing Date(s):

Conference Committee Report:

Compiler Notes

Compiled by: SK Marshall

Date: 1/28/2025

Notes: Audio/Video recordings will be held by the Montana Historical Society

4/03	FISCAL NOTE PRINTED		
4/04	HEARING		
4/10	COMMITTEE REPORT—BILL NOT PASSED AS AMENDED		
4/10	ADVERSE COMMITTEE REPORT ADOPTED	35	14

SB 472 INTRODUCED BY MAZUREK, ET AL.
MONTANA-NORTHERN CHEYENNE WATER COMPACT

4/13	ON MOTION RULES SUSPENDED TO ALLOW LATE REQUEST AND INTRODUCTION	47	0
4/13	INTRODUCED		
4/13	FIRST READING		
4/13	REFERRED TO NATURAL RESOURCES		
4/17	HEARING		
4/18	COMMITTEE REPORT—BILL PASSED		
4/18	ON MOTION RULES SUSPENDED TO PLACE ON 2ND READING THIS DAY	45	0
4/18	2ND READING PASSED AS AMENDED	49	0
4/18	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY	47	0
4/18	3RD READING PASSED	48	1
	TRANSMITTED TO HOUSE		
4/19	ON MOTION RULES SUSPENDED TO ACCEPT LATE INTRODUCTION TO THE HOUSE		
4/19	FIRST READING		
4/19	REFERRED TO JUDICIARY		
4/19	REREFERRED TO NATURAL RESOURCES		
4/22	HEARING		
4/23	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/24	2ND READING CONCURRED	84	15
4/24	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY		
4/24	3RD READING CONCURRED	83	17
	RETURNED TO SENATE WITH AMENDMENTS		
4/25	2ND READING AMENDMENTS CONCURRED	49	0
4/25	ON MOTION RULES SUSPENDED TO PLACE ON 3RD READING THIS DAY	48	0
4/25	3RD READING AMENDMENTS CONCURRED	49	0
5/03	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 812	EFFECTIVE DATE: 5/17/91	

SB 473 INTRODUCED BY SVRCEK, ET AL.
INCLUDING COMMUNITY SERVICE WORKER UNDER WORKERS' COMPENSATION

4/13	ON MOTION RULES SUSPENDED TO ALLOW LATE REQUEST AND INTRODUCTION	43	0
4/13	INTRODUCED		
4/13	REFERRED TO LABOR & EMPLOYMENT RELATIONS		
4/13	FIRST READING		
4/16	HEARING		
4/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
4/17	2ND READING PASSED	49	0
4/18	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
4/22	ON MOTION RULES SUSPENDED TO ACCEPT LATE INTRODUCTION TO THE HOUSE		
4/22	FIRST READING		
4/22	REFERRED TO JUDICIARY		
4/22	HEARING		
4/22	COMMITTEE REPORT—BILL CONCURRED		

4/23	2ND READING CONCURRED	77	17
4/24	3RD READING CONCURRED	84	14
4/29	SIGNED BY PRESIDENT		
5/03	SIGNED BY SPEAKER		
5/03	TRANSMITTED TO GOVERNOR		
5/17	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 813	EFFECTIVE DATE: 7/01/91	

SJ 1 INTRODUCED BY MAZUREK
COMMEMORATE 100TH ANNIVERSARY OF NCCUSL

12/27	INTRODUCED		
12/28	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/18	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	47	0
1/22	3RD READING PASSED	49	0
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO JUDICIARY		
2/04	HEARING		
2/04	COMMITTEE REPORT—BILL CONCURRED		
2/05	2ND READING CONCURRED	90	9
2/06	3RD READING CONCURRED	86	12
	RETURNED TO SENATE		
2/09	SIGNED BY PRESIDENT		
2/09	SIGNED BY SPEAKER		
2/09	FILED WITH SECRETARY OF STATE		

SJ 2 INTRODUCED BY HALLIGAN
ALLOCATE FEDERAL FUNDS FOR PROGRAMS TO COMPLY WITH THE JUVENILE JUSTICE ACT
BY REQUEST OF ADULT & JUVENILE DETENTION, JOINT INTERIM SUBCOMMITTEE ON

1/02	INTRODUCED		
1/03	REFERRED TO JUDICIARY		
1/07	FIRST READING		
1/18	HEARING		
1/18	COMMITTEE REPORT—BILL PASSED		
1/22	2ND READING PASSED	49	0
1/23	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
1/24	FIRST READING		
1/24	REFERRED TO JUDICIARY		
2/07	HEARING		
2/11	COMMITTEE REPORT—BILL CONCURRED		
2/16	2ND READING CONCURRED	95	1
2/18	3RD READING CONCURRED	97	0
	RETURNED TO SENATE		
2/23	SIGNED BY PRESIDENT		
2/23	SIGNED BY SPEAKER		
2/25	FILED WITH SECRETARY OF STATE		

SJ 3 INTRODUCED BY GAGE
INTERIM STUDY OF CONSOLIDATION OF COUNTIES AND COUNTY OFFICES

1/02	INTRODUCED
1/03	REFERRED TO LOCAL GOVERNMENT
1/07	FIRST READING

SENATE BILL NO. 473

INTRODUCED BY SVRCEK, THAYER

IN THE SENATE

APRIL 13, 1991	ON MOTION, RULES SUSPENDED TO ALLOW FOR DRAFTING AND INTRODUCTION OF BILL.
	INTRODUCED AND REFERRED TO COMMITTEE ON LABOR & EMPLOYMENT RELATIONS.
	FIRST READING.
APRIL 16, 1991	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
APRIL 17, 1991	PRINTING REPORT.
	SECOND READING, DO PASS.
APRIL 18, 1991	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 49; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

APRIL 19, 1991	ON MOTION, RULES SUSPENDED TO ALLOW LATE INTRODUCTION OF BILL.
	INTRODUCED AND REFERRED TO COMMITTEE ON JUCICIARY.
	FIRST READING.
APRIL 20, 1991	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
APRIL 22, 1991	SECOND READING, CONCURRED IN.
APRIL 24, 1991	THIRD READING, CONCURRED IN. AYES, 84; NOES, 14.
	RETURNED TO SENATE.

IN THE SENATE

APRIL 24, 1991	RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Senate BILL NO. 473

INTRODUCED BY Sarah A. Stiffler

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(3) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities."

Section 2. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for

INTRODUCED BILL
SB 473

pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; ~~or~~

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

NEW SECTION. **Section 3.** Effective date. [This act] is effective July 1, 1991.

-End-

APPROVED BY COMMITTEE
ON LABOR & EMPLOYMENT
RELATIONS

AS AMENDED

SENATE BILL NO. 473

INTRODUCED BY SVRCEK, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-117, MCA, is amended to read:

"**39-71-117. Employer defined.** "Employer" means:

(1) the state and each county, city and county, city school district, irrigation district, all other districts established by law, and all public corporations and quasi-public corporations and public agencies therein and every person, every prime contractor, and every firm, voluntary association, and private corporation, including any public service corporation and including an independent contractor who has any person in service under any appointment or contract of hire, expressed or implied, oral or written, and the legal representative of any deceased employer or the receiver or trustee thereof; and

(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(3) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities."

Section 2. Section 39-71-118, MCA, is amended to read:

"**39-71-118. Employee, worker, and workman defined.** (1) The terms "employee", "workman", or "worker" mean:

(a) each person in this state, including a contractor other than an independent contractor, who is in the service of an employer, as defined by 39-71-117, under any appointment or contract of hire, expressed or implied, oral or written. The terms include aliens and minors, whether lawfully or unlawfully employed, and all of the elected and appointed paid public officers and officers and members of boards of directors of quasi-public or private corporations while rendering actual service for such corporations for

pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; or

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

(ii) premiums must be paid by the employer, as defined in 39-71-117(3), and must be based upon the minimum wage established under Title 39, chapter 3, part 4, for the number of hours of community service required under the order from the court or hearings officer.

(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 1991.

-End-

SENATE BILL NO. 473

INTRODUCED BY SVRCEK, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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(2) any association, corporation, or organization that seeks permission and meets the requirements set by the department by rule for a group of individual employers to operate as self-insured under plan No. 1 of this chapter; and

(3) any nonprofit association or corporation or other entity funded in whole or in part by federal, state, or local government funds that places community service participants, as defined in 39-71-118(1)(f), with nonprofit organizations or associations or federal, state, or local government entities."

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pay. Casual employees as defined by 39-71-116 are included as employees if they are not otherwise covered by workers' compensation and if an employer has elected to be bound by the provisions of the compensation law for these casual employments, as provided in 39-71-401(2). Household or domestic service is excluded.

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(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; ~~or~~

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

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NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 1991.

-End-

SENATE BILL NO. 473

INTRODUCED BY SVRCEK, THAYER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE WORKERS' COMPENSATION ACT TO INCLUDE IN THE DEFINITION OF "EMPLOYER" AN ORGANIZATION PLACING A PERSON WHO PERFORMS COMMUNITY SERVICE AND TO INCLUDE IN THE DEFINITION OF "EMPLOYEE" A PERSON WHO PERFORMS COMMUNITY SERVICE; PROVIDING FOR WORKERS' COMPENSATION BENEFITS TO COMMUNITY SERVICE WORKERS; PROVIDING THE BASIS FOR PAYMENT OF PREMIUMS BY THE EMPLOYER; AMENDING SECTIONS 39-71-117 AND 39-71-118, MCA; AND PROVIDING AN EFFECTIVE DATE."

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"**39-71-117. Employer defined.** "Employer" means:

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(b) a recipient of general relief who is performing work for a county of this state under the provisions of 53-3-303 through 53-3-305 and any juvenile performing work under authorization of a district court judge in a delinquency prevention or rehabilitation program;

(c) a person receiving on-the-job vocational rehabilitation training or other on-the-job training under a state or federal vocational training program, whether or not under an appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. However, this subsection does not apply to students enrolled in vocational training programs as outlined above while they are on the premises of a public school or community college.

(d) students enrolled and in attendance in programs of vocational-technical education at designated vocational-technical centers; ~~or~~

(e) an airman or other person employed as a volunteer under 67-2-105; or

(f) a person, other than a juvenile as defined in subsection (1)(b), performing community service for a nonprofit organization or association or for a federal, state, or local government entity under a court order, or an order from a hearings officer as a result of a probation or parole violation, whether or not under appointment or contract of hire with an employer as defined in this chapter and whether or not receiving payment from a third party. For a person covered by the definition in this subsection (f):

(i) compensation benefits must be limited to medical expenses pursuant to 39-71-704 and an impairment award pursuant to 39-71-703 that is based upon the minimum wage established under Title 39, chapter 3, part 4, for a full-time employee at the time of the injury; and

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(2) (a) If the employer is a partnership or sole proprietorship, such employer may elect to include as an employee within the provisions of this chapter any member of such partnership or the owner of the sole proprietorship devoting full time to the partnership or proprietorship business.

(b) In the event of such election, the employer must serve upon the employer's insurer written notice naming the partners or sole proprietor to be covered and stating the level of compensation coverage desired by electing the amount of wages to be reported, subject to the limitations in subsection (2)(d). A partner or sole proprietor is not considered an employee within this chapter until such notice has been given.

(c) A change in elected wages must be in writing and is effective at the start of the next quarter following notification.

(d) All weekly compensation benefits must be based on the amount of elected wages, subject to the minimum and maximum limitations of this subsection. For premium ratemaking and for the determination of weekly wage for weekly compensation benefits, the electing employer may elect not less than $900 a month and not more than 1 1/2 times the average weekly wage as defined in this chapter."

NEW SECTION. **Section 3. Effective date.** [This act] is effective July 1, 1991.

-End-

MINUTES

MONTANA SENATE
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON LABOR & EMPLOYMENT RELATIONS

Call to Order: By Senator Thomas E. Towe, Vice Chair, on April 16, 1991, at 12:05 p.m.

ROLL CALL

Members Present:

Thomas Towe, Vice Chairman (D)
Gary Aklestad (R)
Chet Blaylock (D)
Gerry Devlin (R)
Steve Doherty (D)
Thomas Keating (R)
J.D. Lynch (D)
Dennis Nathe (R)
Bob Pipinich (D)

Members Excused: Richard Manning, Chairman (D)

Staff Present: Tom Gomez (Legislative Council).

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Announcements/Discussion: NONE.

HEARING ON SENATE BILL 473

Presentation and Opening Statement by Sponsor:

Senator Paul Svrcek told the Committee Senate Bill 473 addresses a current problem with community service in Montana. He explained a Judge can sentence an individual to perform community service but because of problems with workers' compensation the program has been shutdown. The Department of Institutions, the division of workers' compensation, the local governments, and non-profit organizations have worked through the session to reach a compromise (Senate Bill 473). Senator Svrcek presented the Committee with a technical amendment.

Proponents' Testimony:

Dan Russell, Administrator of the Division of Corrections told the Committee the state fund had no administrative method of

extending workers' compensation coverage for community service placements. He explained community service is a sentencing option intended to provide meaningful service to communities while inflicting a punishment upon offenders. It can be used in lieu of a sentence of incarceration, and is very often a condition of a deferred or suspended sentence. He told the Committee there has been an increase in interest in the use of community service as a sentencing option. During the past year through a grant the department began a formal community service program, which is a pilot project, in Missoula. The project will be evaluated annually. He explained there are similar programs operational in Billings and Great Falls. The success rates are economical and the courts are in strong support. He told the Committee Senate Bill 473 will allow community service placements to become available with less difficulty. When a person is placed in a community service setting it is generally with a non-profit agency or organization, or with federal, state, or local government entities. He explained an obvious liability exists should the offender become injured while performing the community service obligation. Senate Bill 473 limits the coverage to medical expenses and an impairment award. It is based upon minimum wage. He stated there is no funding request; and no future requests are foreseen. He explained currently there are grant funds to utilize for payment of premium costs; and in the future, client fees would pay for premiums. He told the Committee Senate Bill 473 was a joint effort by the State Compensation Insurance Fund and the Corrections Division.

Diane Morin, Coordinator of the Community Service Program in Missoula through the Department of Institutions spoke in support of Senate Bill 473. She presented the Committee with a letter (Exhibit #1). She told the Committee without the workers' compensation coverage the program is at risk. She explained the city of Missoula has concerns about using the program, as well as Missoula County without having the coverage.

Bruce Moerer, representing the Montana School Board Association told the Committee clearly its the non-profit association or corporation which does the placing that is the employer under the definition. He explained the association would object if the local government agency or the school district was named the employer. He asked to clarify this point for the record.

Gordon Morris of the Association of Counties and a member of the trustees of the Association of Workers' Compensation Program spoke in support of Senate Bill 473.

Terry Minow of the Montana Federation of State Employees told the Committee MFSE represents the probation and parole officers. She explained generally the probation and parole officers feel community service is a proper and effective means of rehabilitation and support legislation intended to make community service a viable option.

Opponents' Testimony:

NONE.

Questions From Committee Members:

Senator Aklestad asked Senator Svrcek if there would be additional premiums paid. Senator Svrcek deferred the question to Dan Russell. Mr. Russell explained there would be premiums paid. At the present time there is money in the grant for payment. When the grant is no longer in existence the clients will pay approximately $25 per placement. A portion of the $25 will pay premiums.

Senator Aklestad asked Mr. Russell if these employers would be in the category of $116 minimum premium. Mr. Russell deferred the question to Jim Murphy of the state fund. Mr. Murphy explained the $116 minimum premium is attached to an employer which has not paid $116 in premiums over a years time. The employers identified in Senate Bill 473 would be subject if their premium does not exceed $116.

Senator Towe asked Mr. Murphy what the premium would be on a minimum wage for a weeks period. Mr. Murphy explained a separate class code would be initiated by evaluating the types of employment the community service participants perform. The past experience in those types of employment would be evaluated. A composite rate would be applied to new class code which would evaluated each year.

Senator Towe asked Mr. Murphy what process is being used with Alternatives, Inc. in Billings. Mr. Murphy explained Alternatives, Inc. are using two class codes (clerical and custodial). He explained Alternatives, Inc. would be shifted to this program.

Senator Aklestad asked Mr. Murphy if the employer would be subject to the minimum $116 premium. Mr. Murphy told the Committee that was correct.

Senator Blaylock asked Mr. Murphy if the employer is the one who refers the individual to community service. Mr. Murphy explained the organization which places the individual in community service is the employer.

Senator Blaylock asked Mr. Murphy if the court would be considered the employer, or if the court would refer the individual to a non-profit organization which becomes the employer. Mr. Murphy stated the court would refer and the non-profit organization would be the employer.

Senator Towe told the Committee it is being operated in this manner in Billings and is working well.

Senator Nathe asked Mr. Murphy if there is a "blanket policy" which is taken out to cover the individuals. Mr. Murphy explained each of the non-profit organizations have separate policy as the employer. Each time a judge or hearings officer orders community service, based on the hours ordered, those individuals would be reported to the state fund and a premium would be paid based on minimum wage by the employer, i.e., non-profit organization.

Senator Keating asked Mr. Russell what prompted the legislation. Mr. Russell explained community service is being used more as an option to incarceration.

Senator Keating asked Mr. Russell if there has been a claim which prompted it. Mr. Russell there was not.

Senator Nathe asked if the court were considered an employer. He cited an example in which an individual was sentenced by the Justice of the Peace to paint the County Courthouse. He asked in this instance who the employer would be, the county or the court.

Senator Towe explained in that particular situation there was not a community service organization in the community. Senate Bill 473 contemplates a non-profit established for this purpose.

Senator Nathe asked if the example he cited would be covered under workers' compensation. Mr. Russell explained in those areas where no program exists a regional probation/parole supervisors will work with local corporations to establish this as a service to the court.

Senator Aklestad stated Senate Bill 473 is a definition. There is no mandate for the groups to carry workers' compensation. Senator Towe explained there is no mandate. Mr. Murphy explained if the group is made an employer under workers' compensation and the community service participant is designated an employee, Section 401 requires employers to cover employees. He stated community service programs are mandated to cover the participants as employees.

Closing by Sponsor:

Senator Svrcek closed on Senate Bill 473.

EXECUTIVE ACTION ON SENATE BILL 473

Amendments, Discussion, and Votes:

Senator Devlin moved to amend Senate Bill 473 (SB047301.ATG). Motion CARRIED UNANIMOUSLY.

Senator Blaylock moved Senate Bill 473 DO PASS as amended. He told the Committee, after hearing Senator Nathe's example, there are many counties throughout Montana which do not have these types of non-profit organizations. He stated the court is the employer and an appropriation to the courts will be needed.

Senator Towe stated the issue does need to be addressed. He told the Committee through his involvement with Alpha House there was no insurance coverage as inexpensive as workers' compensation.

Recommendation and Vote:

Blaylock motion to DO PASS as amended CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment At: 12:35 p.m.

Thomas E. Towe

SENATOR THOMAS E. TOWE, Vice Chairman

Linda Casey

LINDA CASEY, Secretary

TET/llc

ROLL CALL

SENATE LABOR AND EMPLOYMENT RELATIONS COMMITTEE

DATE 4/16/91

____ LEGISLATIVE SESSION ____

NAME	PRESENT	ABSENT	EXCUSED
SENATOR AKLESTAD	P		
SENATOR BLAYLOCK	P		
SENATOR DEVLIN	P		
SENATOR KEATING	P		
SENATOR LYNCH	P		
SENATOR MANNING			E
SENATOR NATHE	P		
SENATOR PIPINICH	P		
SENATOR TOWE	P		
Senator Doherty	P		

Each day attach to minutes.

SENATE STANDING COMMITTEE REPORT

April 16, 1991

MR. PRESIDENT:

We, your committee on Labor and Employment Relations having had under consideration Senate Bill No. 473 (first reading copy -- white), respectfully report that Senate Bill No. 473 be amended and as so amended do pass:

1. Page 4, line 4.
Following: "order"
Insert: ","

Signed: Thomas E. Towe
Thomas E. Towe, Vice Chairman

11-16-91
Amd. Coord.

SB 4-16
Sec. of Senate

April 16, 1991

Honorable Committee Members:

It has come to our attention that under current worker's compensation regulations the Missoula Community Service Program is unable to obtain worker's compensation for court-ordered volunteers (offenders) who are placed by that program. Under current worker's compensation regulations volunteers of community service programs have been determined to be neither volunteers for a community service program nor employees of such a program. Therefore, these individuals do not qualify for worker's compensation coverage. Without this coverage many non-profit and governmental agencies refuse to utilize offenders as volunteers. Consequently, unless community service programs are allowed to obtain worker's compensation benefits on behalf of court-ordered participants, community service may not be an option when alternative methods of sentencing are considered and implemented.

Community service as a sentencing alternative is a cost-effective move at a time of diminishing resources for corrections programs. In fact, during the current legislative session several bills were introduced that stipulate community service as a sentencing option in an attempt to reduce ever-growing jail and prison populations. However, these pieces of legislation are virtually useless without additional legislation that allows for worker's compensation coverage for these individuals if they are not able to perform community service because of lack of coverage.

Senate Bill 473 amends the current worker's compensation's definition of "employer" to include the organization placing a person who performs community service, and the definition of "employee" to include a person performing community service and would provide for worker's compensation benefits to community service workers.

We strongly urge you to pass this legislation which places court-ordered community service volunteers under the worker's compensation law. Failure to do so places a burden on local jurisdictions and state institutions who have been forced to consider and adopt alternative means of sentencing in an attempt to reduce both jail and prison populations.

Thank you for your consideration.

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 4/16/91
BILL NO. SB473

Daniel Kemmis, Mayor
City of Missoula

Jim Nugent, City Attorney, Missoula

Joy S. Earls, Personnel/EEO Officer, Missoula; Advisory Committee Member

Donald J. Louden, Municipal Judge, Missoula

Michael D. Morris, Justice of the Peace, Dep't. II; Advisory Committee Member

John S. Henson, District Judge, Dep't. II, Missoula

Margaret Borg, Chief Public Defender, Missoula, Advisory Committee Member

Dennis M. Taylor, Chief Administrative Officer, Missoula

G. Lee Meltzer, Assistant Chief of Police, Missoula; Advisory Committee Member

J. Michael O'Hara, Assistant Detention Center Administrator, Missoula; Advisory Committee Member

Judith L. Wang
Assistant City Attorney
Advisory Committee Member

DATE 4/16/91

COMMITTEE ON Senate Labor

SB 473

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
Diane M. Morin	Missoula Community Service Dept. of Institutions Program	SB 473	X	
Gordon Morris	MACo	SB 473		
Bruce W. Bowers	MSBA	SB 473		
Larry Fasbender	CBAS	473		
Jon Russell	Montana Independent Living Project	473	X	
Jan Murphy	State Senate	473		

(Please leave prepared statement with Secretary)

WITNESS STATEMENT

NAME: Diane M. Morin DATE: 4/16/91

ADDRESS: 616 W. Central, Missoula

PHONE: 728-7300 (H), 721-4305 (W)

REPRESENTING WHOM? Missoula Community Service Program
Department of Institutions

APPEARING ON WHICH PROPOSAL: SB 473

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on April 22, 1991, at 9:10 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
William Boharski (R)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Royal Johnson (R)
Vernon Keller (R)
Thomas Lee (R)
Bruce Measure (D)
Charlotte Messmore (R)
Linda Nelson (D)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)

Members Excused: Rep. Gould, Rep. Rice, Rep. Wyatt

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

HEARING ON SJR 29
INTERIM STUDY OF RETROCESSION OF PL 280 JURISDICTION ON FLATHEAD RESERVATION

Presentation and Opening Statement by Sponsor:

SEN. DOHERTY, SENATE DISTRICT 20, stated that he was appearing on behalf of the Senate Judiciary Committee which drafted and co-sponsored SJR 29. He stated that retrocession in public law 280 was one of the more debated issues at the present legislative session. There are people on both sides of the issue that are responsible for SJR 29. He stated that the Judiciary Committee came up with a request that during the interim the two sides could get together and figures how best to make the retrocession

happen. He stated that it has occurred on 7 other reservation and will happen someday to the Flathead reservation. He stated that some of the concerns were about law enforcement, cross deputization, and other areas that need to be worked on. The mechanism for doing that is this SJR 29. He stated that the resolution talks about the Committee on Indian Affairs, how the study will issue public hearings to involve all sides of the issue, go out to the Flathead reservation and spend time hearing all sides of the issue and figure out how the retrocession can happen with all sides benefitting. He stated that SJR 29 is needed and necessary.

Proponents' Testimony: NONE

Opponents' Testimony: NONE

Questions From Committee Members:

REP. RUSSELL asked **SEN. DOHERTY** what the Flathead Nation feels about this resolution? **SEN. DOHERTY** stated that the last information he received was that they were in favor of the resolution. **REP. RUSSELL** asked **SEN. DOHERTY** if he is feeling that the committee on Indian Affairs is going to be able to be the proper referee during the meetings on the Flathead Reservation? **SEN. DOHERTY** stated that it will be difficult for the Committee on Indian Affairs, but the eyes of the world will be upon them in any hearings that occur. He felt the safest course would be to hold public hearings for testimony with everybody involved.

REP. RUSSELL asked **SEN. DOHERTY** why this resolution is needed? Why can't the tribe go through this without any the Legislature's involvement? **SEN. DOHERTY** stated that the tribes haven't done it yet. He didn't know that they would be able to and under the state, which has to be the one to approve the request of retrocession, the state is the appropriate agency to govern the proceedings.

REP. RUSSELL stated that she wasn't sure where the Flathead Nation was at present, but they have talked about going the administrative route through the U.S. Congress. She felt the state wasn't ready to sit down and discuss this issue. "I have real questions about this study."

SEN. DOHERTY stated that the tribes can always go to Federal Court and that it is an option. He believes that the study would be a good opportunity and the tribe representatives were consulted.

REP. WHALEN asked **SEN. DOHERTY** if the actual study will be done by the legislation? **SEN. DOHERTY** stated that he doesn't know how much money the Joint Committee on Indian Affairs has to conduct their business, but he felt this study should be their number one priority.

Closing by Sponsor:

SEN. DOHERTY stated that Indian Affairs may very well need additional money to get everything done that will need to be accomplished during this study. He stated that there has been some question about appointing different individuals in an advisory capacity. He didn't believe that having a statue appointing the committee could be done. He felt that the eyes of people will be on the study to make sure that input is received from all aspects. He stated that this is an appropriate vehicle for Indian Affairs and is something that has to be done and will be done.

HEARING ON SB 473

Presentation and Opening Statement by Sponsor:

REP. DRISCOLL, HOUSE DISTRICT 92, stated that this bill is important to alternative sentencing in the state of Montana. Without this bill, there is no organization that will take the risk of unlimited court action in court for a work related injury. He stated if you are a probation, parole officer performing a community service, the agency that is in charge of the officer would pay worker compensation premium based on minimum wage for the work they perform and if the officer got hurt, the benefits would be limited to medical expenses and award if that person had permanent impairment. There would be no total award and not actually earning any money. He stated that without this bill there will be very little alternative sentencing in a community based organization.

Proponents' Testimony:

Michael Sherwood, Montana Trial Lawyers Association, stated that SB 473 seems to be a good bill in response to work related injuries. He felt this bill keeps community service alive and the association supports the bill.

Opponents' Testimony: NONE

Questions From Committee Members:

REP. BOHARSKI stated that he had a couple of concerns with the bill. He stated that the language in the subsection 3, on page 2 in a concern. He felt that it looks like the employer should be the governmental entity not the non-profit organization that the person is doing the service.

SEN. SVRCEK stated that situations like this have been hassled over right up until the time the Legislature suspended the rules and introduced the bill, between the Department of Institutions and the Division of Worker's Compensation, and several of the non-profits that handle this type of service. He stated that for

the sake of continuing community services programs, the non-profits have agreed to the structure outlined in the bill and are aware of the risks involved.

Closing by Sponsor:

SEN. SVRCEK stated that he knows the committee is aware of how important community service is in Montana and would hope the bill passes out of the committee favorably.

EXECUTIVE ACTION ON SB 473

Motion: **REP. BROWN MOVED SB 473 DO BE CONCURRED IN.**

Motion: **REP. BROOKE** moved to amend SB 473 on page 2, line 8, to insert "state or local government entity, or any".

Discussion:

REP. BROOKE stated that her amendment would be just for clarity.

REP. BROWN stated that it is clear enough on the bill's face and if the committee wants this bill to go back and forth on the sides with four days to go in the session then the committee can send the bill over with this amendment.

REP. BROOKE WITHDREW HER AMENDMENT.

Vote: Motion carried unanimously.

EXECUTIVE ACTION ON SJR 29

Motion: **REP. DARKO MOVED SJR 29 DO BE CONCURRED IN.**

Discussion:

REP. BROWN stated that the issue of retrocession received long and substantial discussion in the House and some discussion in the Senate and felt that the Senate Judiciary was derelict in their responsibilities on this issue. He stated that he intended to move a motion to table when there has been a reasonable amount of discussion.

REP. RUSSELL stated that she commended the House Judiciary Committee for having taken a good look at the bill and passing it. She stated that after the bill was watered down in the Senate they still killed it and the Senate now wants to have a study on retrocession. She felt that the resolution should be tabled.

REP. BOHARSKI asked why all the hostility toward SJR 29.

REP. BROWN stated that the process of discussion between the state of Montana and the Salish Kooteni can proceed well and should proceed well in the interim having this Legislature fail to pass the Retrocession bill. He stated that it was his judgment that a study resolution is not needed especially to a committee that is so overburdened with issues that they couldn't possibly deal with this study properly. He felt this was a cover-your-ass bill for those that didn't vote correctly the first time around.

Motion/Vote: REP. BROWN MOVED SJR 29 BE TABLED. Motion carried 16 to 4 with Rep's: Boharski, Clark, Keller and Johnson voting no.

ADJOURNMENT

Adjournment: 9:49 a.m.

BILL STRIZICH, Chair

JEANNE DOMME, Secretary

BS/jmd

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL DATE 4-22-91

NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	✓		
REP. ARLENE BECKER	✓		
REP. WILLIAM BOHARSKI	✓		
REP. DAVE BROWN	✓		
REP. ROBERT CLARK	✓		
REP. PAULA DARKO	✓		
REP. BUDD GOULD			✓
REP. ROYAL JOHNSON	✓		
REP. VERNON KELLER	✓		
REP. THOMAS LEE	✓		
REP. BRUCE MEASURE	✓		
REP. CHARLOTTE MESSMORE	✓		
REP. LINDA NELSON	✓		
REP. JIM RICE			✓
REP. ANGELA RUSSELL	✓		
REP. JESSICA STICKNEY	✓		
REP. HOWARD TOOLE	✓		
REP. TIM WHALEN	✓		
REP. DIANA WYATT			✓
REP. BILL STRIZICH, CHAIRMAN	✓		

4-12-91
SB 473

HOUSE STANDING COMMITTEE REPORT

April 22, 1991

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 473 (third reading copy -- blue) be concurred in .

Signed: _____
Bill Strizich, Chairman

Carried by: Rep. Driscoll

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. SJR #29

DATE 4-22-91 SPONSOR(S) Sen. Halligan

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

House Judiciary COMMITTEE BILL NO. SB# 473

DATE 4-22-91 SPONSOR(S) Sen. Svrcek

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Michael Sherwood	MTLA	✓	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.